

REMARKS

Claims 1 and 3-7 are pending in the application and are presented for the Examiner's review and consideration. Claims 1, 3, 4, and 6 have been amended and claim 2 has been cancelled. Applicants believe that the claim amendments, cancellation, and the accompanying remarks serve to clarify the present invention and are independent of patentability. Accordingly, Applicants respectfully submit that that they do not limit the range of any permissible equivalents.

Information Disclosure Statement

The Examiner states that in the Information Disclosure Statement filed February 2, 2004 the references that are not presented in the English Language, and are without an English Abstract, have not been reviewed. Accordingly, Applicants provide herein a legible copy of each reference document, including an English Abstract or an English language equivalent, listed in the Information Disclosure Statement.

Abstract

The Examiner states that the Abstract of the disclosure was objected to because the first sentence in the Abstract fails to recite using L-Theanine for acceleration of regeneration of what. The Examiner stated that correction is required.

Applicants have amended the first sentence of the Abstract to recite "Method of using L-Theanine for acceleration of the physiological recovery process after physical and/or mental stressing." The amendment to the abstract is supported in the specification.

In light of the foregoing, Applicants request reconsideration and withdrawal of the object to the abstract.

Claim 2 Rejection

Claim 2 was objected to under 37 CFR 1.75(c), as being of improper dependent form for failing to further limit the subject matter of the previous claim. The Examiner states that claim 2 recites “L-theanine in administered to the person,” while claim 1 recites “introducing into a person,” thus claim 2 does not further limit the subject matter of claim 1.

Claim 2 has been cancelled, rendering the objection to this claim moot.

35 U.S.C. § 112 Rejection

Claims 1-7 were rejected under 35 U.S.C 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The Examiner stated that the recitation on claim 1 “for accelerating the person’s regeneration from the stress” lack clarity and is confusing.

Initially, Claim 2 has been cancelled, rendering the objection to this claim moot.

Applicants have amended claim 1 to recite “Method for acceleration of a physiological recovery process of a user after a physical and/or mental stressing.” Applicants submit that the amendment to claim 1 particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In light of the foregoing, Applicants request reconsideration and withdrawal of the section 112 rejections.

35 U.S.C. § 102(b) Fisher

Claims 1-7 were rejected under 35 U.S.C. § 102(b) as anticipated by Fisher et al. (“Fisher”) EP 1 275 309. For the reasons set forth below, Applicants respectfully submit that the rejected claims are not taught or suggested by Fisher.

Fisher discloses a food composition, preferably an aqueous beverage, comprising a mixture of protein fractions and herbal extracts. (¶[0001]). This mixture causes, when taken up via the digestive system, stress relaxation to mammals, especially humans. (Id.) A major part of

the healthy population is reporting sleep dissatisfaction more or less frequently. (§[0002]). The reasons therefore are e.g. internal restlessness or stress. (Id.)

As such, Fisher discloses a food composition which results in stress relaxation for treating insomnia. The food composition includes a synergistic combination of peptides and herbal extract. Fisher specifically notes that the combination of peptides and herbal extracts provide a better result than the individual components being used separately. However, Fisher fails to disclose a method for acceleration of a physiological recovery process of a user after a physical and/or mental stressing, only disclosing a treatment for insomnia.

In contrast, the present invention concerns a method of treatment comprising the step of introducing into a person experiencing physical and / or mental stressing a quantity of at least 50 mg of L-theanine for accelerating the person's regeneration from the stressing. (§[0011]). In accordance with the invention, a dose of at least 50 mg L-Theanine is administered after the stressing by the person ingesting or drinking a food containing the L-Theanine. (§[0013]). This way the regeneration process is substantially accelerated. (Id.) For example the natural regeneration process can be shortened to about 30 minutes. (Id.)

Based on the knowledge derived from investigations on animals and the hypothesis of a relaxing (stress-relieving) effect, the following are to be recorded on body functions: central nervous activity; peripheral adaptation reactions by stress hormones; indications regarding the coupling between central nervous control and hormonal regulation; circulatory behaviour; electrodermal stress reaction, optionally wellbeing. (§[0021]). After stress, a natural relaxation process starts (down-regulation), which forms the basis for comparison in the placebo test and thus may be used for differentiation between support of natural mechanisms by the test substance and possible non-physiological but pharmacological effects of the test substance. (§[0024]). The target parameters in the after-stress phase are observed after administration of the test substance (optionally in different dose)/of a placebo in randomised sequence in a double-blind process. (Id.)

The influence of the natural switching process from activity to recovery (from ergotropy

to trophotropism) by foodstuffs or medicines can be understood both in the sense of support of the physiological mechanisms, as shown by the example of L-theanine, or also optionally in the sense of pharmacological influence with changes to the fundamental courses of the measured values of electrical brain activity and hormonal control of body functions. (§[0033]). L-Theanine in the dose range 50 to 200 mg does not trigger quantitative and fundamental changes in physiological sequences of down-regulation after stress in the pharmacological sense, but acts to accelerate the processes of switching from stress to recovery, thus supports switching into the relaxation phase after stress in the sense of promoting regeneration. (§[0035]).

As such, the present invention discloses a method for accelerating the physiological recovery of a user experiencing physical and/or mental stressing. The administering of the appropriate dosage of L-Theanine can decrease the recovery time from about 2 hour to about 30 minutes. Fisher is unrelated to a method of accelerating the physiological recovery time, disclosing only a composition of use in treating insomnia.

Claim 1 recites, *inter alia*, a method for acceleration of a physiological recovery process of a user after a physical and/or mental stressing. The method includes providing an ingestible product including at least 50 mg of L-theanine. The ingestible product is introduced into the user having experienced the physical and / or mental stressing.

In light of the foregoing, independent claim 1 is respectfully submitted to be patentable over Fisher. As claims 3-7 depend from claim 1, and necessarily include all the elements of the base claim, Applicants respectfully submit that these dependent claims are also patentable at least for the same reasons.

Conclusion

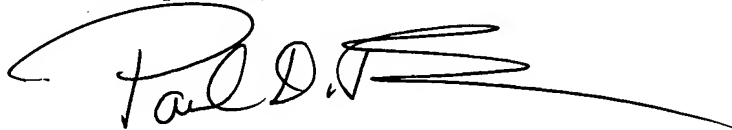
In light of the foregoing remarks, this application is now in condition for allowance and early passage of this case to issue is respectfully requested. If any questions remain regarding this amendment or the application in general, a telephone call to the undersigned would be appreciated

Applicant: Geiss et al.
Application No.: 10/695,427
Examiner: P. Spivack

since this should expedite the prosecution of the application for all concerned.

A fee of \$180.00 is believed due for the Information Disclosure Statement which is submitted concurrently herewith. However, please charge the required fee (or credit any overpayments of fees) to the Deposit Account of the undersigned, Account No. 500601 (Docket No. 7390-X03-020).

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Paul D. Bianco", with a long horizontal flourish extending to the right.

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